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Joint written statement* submitted by the Europe-Third World Centre (CETIM), a non-governmental organization in General consultative status, and International Association of Democratic Lawyers (IADL), a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

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Mining and Human Rights Violations in Colombia: The Case of Anglo Gold Ashanti vs the Afro-descendant community of La Toma (Cauca)[1]

The Context of Mining Policy in Colombia

In 2001, Colombia adopted a new mining code. When drafting this code, the government was directly advised by a law firm representing half of the business enterprises listed on the national mining register and by Canadian companies with substantial interests in the territory. (Currently, 43.41% of the mining companies working in Colombia are Canadian.) This law opened the door to the intensification of exploration and mining operations by declaring the mining industry to be an "activity of public utility and of social interest" and thus allowing the unilateral expropriation of lands where the presence of mineral ore is suspected to be.

On the recommendation of the World Bank, the Mining Code eliminated the possibility that the state had had until then of participating directly in mining operations, leaving the state to play only a regulatory and control role. The state's primary mission was declared to be to "stimulate efficiently and convincingly private investment".[2] The Mining Code has also led to the privatization of mining operations. The economic revenues for the state are reduced to those derived from surface rights and royalties the companies must pay during the exploration and operations phases, respectively.

Colombia currently is experiencing a veritable mining boom. During the governments of César Gaviria, Ernesto Samper and Andrés Pastrana (1990-2002), 1,889 mining concessions were granted for 165,000 hectares, whereas during the eight years of the government of Alvaro Uribe (2002-2010), 7'869 mining concessions were granted for 4,283,000 hectares![3]

In 2005, within the framework of the government's "Vision 2019" policy, it was specified: "In 2019, the Colombian mining industry will be one of the biggest in Latin America and will have significantly increased its participation in the national economy."[4] The mining industry is presented as THE strategic economic wager. The proposed objective is that, as 2019 approaches, Colombia find itself among the three leading Latin American countries with the highest direct foreign investment (DFI) in the mining sector. Moreover, "Vision 2019" establishes, as pointed out above, that only private initiative can stimulate and intensify this development. All this has attracted many private business enterprises to Colombia, such as Barrick Gold or Anglo Gold Ashanti.

President Juan Manuel Santos, in power since 2010, has reaffirmed, consolidated and continued what his predecessor, Alvaro Uribe, began: the opening of huge swathes of national territory to mining operations. Concessions have been granted for 8.4 million hectares,[5] to wit 13% of the national territory of 114 millions hectares.

In June 2012, the government created "Strategic Mining Reserve Regions", a mechanism through with a total of 25'188'759 hectares are defined as set aside exclusively for mining operations, which represents a dramatic change in land use since most of these zones are agricultural land and a significant portion is located in the Amazon forest.

The mining boom in Colombia coincides with an increase of human rights violations. The Colombian government is obviously not playing its control and regulatory role in this sector, and it is also failing in its duty to protect human rights, to prevent violations and, when appropriate, to sanction them. Yet the National Inspectorate General, referring to a report by the energy mining trade union, notes in this regard that "80% of the human rights violations in Colombia take place in petroleum-mining municipalities; 87% of forced displacements come from these municipalities; and 78%

[1] This declaration has been drafted in collaboration with SEMBRAR-Colombia.
[2] National Mining Development Plan 2019.
[3] Figures from the National Planning Council.
[4] National Mining Development Plan 2019.
[5] Guillermo Rudas, Minería y Ambiente, presentation at INDEPAZ, September 2010.

of the crimes against indigenous peoples as well as 90% of the crimes against Afro-descendants are committed in the mining-energy regions".[6]

Anglo Gold Ashanti's Activities in Colombia

Anglo Gold Ashanti is a transnational corporation whose headquarters are in South Africa but a majority of whose investors are from the United States. It became known in Colombia in 2007, with the announcement of the discovery of the La Colosa mine in the Department of Tolima (center of the country). But previously, the corporation was already operating in Colombia through a subsidiary based in the British Virgin Islands, named Société Kedhahsa S.A. Currently, Anglo Gold Ashanti lays claim to millions of hectares of concessions for carrying out exploration and mining operations.

Several investigations carried out in Colombia have shown that in the 336 municipalities in which the transnational Anglo Gold Ashanti was active through it subsidiary Kedhahsa, paramilitary groups had directly and systematically attacked the civilian population, through actions such as extrajudicial executions, torture, disappearances and forced relocations.[7] 70% of the municipalities in which this transnational was active, or claimed to be pursuing exploration work and mining operations, are regions where the paramilitaries have a strong presence, with well known consequences for human rights.[8] According to CINEP data, 5,438 persons were victims of crimes against humanity during the period 1988-2006 in the regions where Anglo Gold Ashanti was active in Colombia.[9]

Since 2003, there has also been a systematic and generalized process of human rights violations committed by the members of the police forces and the military, notably cases of extrajudicial executions, arbitrary detention, indiscriminate bombings, illegal searches and threats to community leaders devoted to artisanal mining activities, in areas where Anglo Gold Ashanti holds concessions.[10]

Human Rights Violations of the Afro-descendant community at La Toma (Cauca)

The La Toma district (7'000 hectares situated in the department of Cauca in the southwest of the country) was recognized by the Constitutional Court (Judgment T 1045a, 14 December 2010) as an ancestral territory of the Afro-descendant community. In this territory, gold mining operations have been carried on at an artisanal level since the arrival of slaves, to wit since about 1636. The ancestral and artisanal mining activities currently provide a source of economic subsistence to some 1,300 families, about 5,200 persons, living in the La Toma district.

But this community is now in danger of being dispossessed of its ancestral territory because of the concessions granted to Anglo Gold Ashanti as well as to other corporations engaged in large-scale mining operations. These concessions were granted without observing the preliminary consultation process established in the International Labor Organization's Convention 169, which Colombia has ratified.

Since October 2009, Anglo Gold Ashanti has held two mining concessions for exploration and mining of gold in the La Toma territory,, representing a total of 349,77 hectares, each granted for 30 years. Further, Anglo Gold Ashanti has filed seven other requests for concessions for mining operations largely implicating the Afro-descendant community' territory in La Toma.

Since the granting of the mining concession, there has been a marked increase in killings, threats and human rights violations against the Afro-descendant community practicing ancestral and artisanal mining. Paramilitary groups have

[6] National Inspectorate General, Report "Minería en Colombia, Fundamentos para superar el modelo extractivista", junio del 2013

[7] Human Rights and Politic Violence Data Bank, Centro de Investigación y Educación Popular (CINEP), 2008

[8] Ibid.

[9] Ibid.

[10] DH Red de Defensores No Institucionalizados, Public complaint, April 2007

appeared and are trying to force the community to leave in order to yield the land to the transnational mining corporations.

On 7 April 2010, six persons,[11] members of the Afro-descendant community practicing artisanal and ancestral mining, were killed in the village of Hato Santa Marta (La Toma district). On 22 July 2010, Alex González, another miner of the same community, known for his opposition to large-scale mining operations, was killed. In 2011, threats by paramilitary groups continued. In March 2013, armed paramilitary groups entered the community, set up road blocks and threatened the inhabitants. On 30 May of the same year, paramilitary groups killed four more persons[12] practicing artisanal mining in the La Toma district. Since then, the threats to and intimidation of the members of the community have continued.

The government is complicit in this situation, for it not only does not take any measures to protect the Afro-descendant community of La Toma from the human rights violations of which they are victims, but it also participates in the repression of this community through various administrative measures. Thus, in 2009, the National Mining Agency ordered the expulsion of the Afro-descendant community groups carrying on artisanal mining and requested the opening of a criminal investigation on the members of the community for alleged offenses related to illegal mining and violation of private property.

However, in 2010, the Constitutional Court (Judgment T1045a) recognized that these mining concessions granted to the transnational corporations in the territory belonging the Afro-descendant community had been granted in violation of the requirement of prior consultation,[13] and it ordered that these concessions and titles be suspended.[14]

The ruling of the Court declared that "the violation of the right to consultation regarding natural resource development projects led also the violation of other rights of the affected people, such as autonomy and cultural and social integrity, and even to their right to property". Similarly, the Court declared itself dismayed by the increase in environmental damage caused by the mining operations, in particular the impacts on water sources, pollution, deforestation and the increase in environmental imbalance.

Another important aspect of the Court's ruling refers to the protection of the Afro-descendant community' cultural integrity and to their traditional practices of production. The Court thus clarified that the only mining operations that could be carried out on this territory are the traditional ones practiced by the Afro-descendant community. In this regard, the Court established "the illegal character of all types of extractive mining activities outside the traditional or ancestral mining practices that the Afro-descendant community carry on daily for their subsistence".

However, the Colombian government has not implemented the Constitutional Court's ruling. Worse, in April 2013, the National Mining Agency ordered the suspension of the ancestral mining activities, arguing that this move was in conformity with the Constitutional Court's ruling.

Thus, the government, and in particular, the National Mining Agency, recognize neither the spirit nor the letter of the Court's ruling that establishes, among other things, the guarantee of the right to cultural integrity, which in this case means the continuation of traditional practices of artisanal mining. This position directly threatens the continued subsistence of the Afro-descendant community. It contributes to reinforcing a climate of repression and intimidation against this community. The risk is great, today more than ever, of seeing this community forcefully displaced and

[11] Yiber Ocoró, José Arnobio Mosquera, Wilfer Fernando Mosquera, Pablo Eleazar Ibargüen Mosquera, Henry Ibargüen Mosquera y Macedonio Ibarguen Mosquera

[12] Joran Muñoz, Leyder Andrés Anacona, Cicerón Ortiz and Edier Humberto Cerón Ortiz

[13] The Court decided that the Afro-descendant community of La Toma had to be consulted regarding the effects of mining activities in its territory, but nothing has happened so far.

[14] Existing concessions have indeed been suspended or revoked, and no new concessions have been granted since then, but illegal mining activities with heavy machinery continue, with the government being aware of the situation but imposing no sanctions.

dispossessed of its territory to allow access to the transnational corporations of the mining sector, with Anglo Gold Ashanti in the lead.

Conclusion

In conclusion, since the granting of the mining concessions to Anglo Gold Ashanti and other transnational corporations, the Afro-descendant community practicing artisanal mining on its ancestral territory in the district of La Toma (Cauca) is victim of repeated human rights violations, in particular the right to life, the right to participate in the making of decisions and the right to prior, free and informed consultation. Economic, social and cultural rights, especially the right to land and to territory, the right to work, the right to water, the right to food and the right to live in healthy environment are threatened. This community is also threatened with forced displacement and with being deprived of its means of subsistence.

In view of the above, the CETIM and IADL exhort the Colombian government to respect its international commitments, in particular the two international human rights covenants, the United Nations Declaration on the Rights of Indigenous Peoples and ILO Convention 169. It requests the Colombian government to take all possible measures to protect the rights and guarantee the security of the Afro-descendant community of the district of La Toma (Cauca).

The CETIM and IADL also request the Colombian government to assure full implementation of the Constitutional Court's ruling (T 1045 A of 2010), and, in particular, to guarantee the continuation of ancestral mining activities and to cancel the suspension of these activities, as well as assuring the respect and implementation of the decision made by the community within the framework of consultation process ordered by the Court.

The CETIM and IADL request the Special Rapporteurs on the Rights of Indigenous Peoples and on Extrajudicial, Summary and Arbitrary Executions as well as the Working Groups of Experts on Persons of African Descent, to be seized of the matter and carry out missions in the field in Colombia.

The CETIM and IADL call upon the Human Rights Council to intervene with the Colombian government to assure the implementation of its international commitments and to continue to follow carefully the evolution of the human rights situation in this country.

The CETIM and IADL, further, request the governments of the United States and of South Africa to assure that Anglo Gold Ashanti respects the human rights of the Afro-descendant communities in the framework of its mining activities in Colombia and that investigations be carried out regarding human rights violations in Colombia, and, if appropriate, that the perpetrators be sanctioned, in conformity with their obligation to prevent human rights violations committed abroad by third parties under their jurisdiction.